

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE **RECEIVED**
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In the application of)

Group Art Unit 3775

OCT 29 2010

Jean-François BIEGUN and)
Pascal MARCEAUX)

Nicholas W. Woodall, Examiner

CERTIFICATE OF TRANSMISSION

Serial No.: 10/534,567)

I hereby certify that this correspondence is being
facsimile transmitted to the United States Patent and
Trademark Office, Fax No. (571) 273-8300
on this 28th day of October, 2010

Filed: May 12, 2005)

For: ACCESSORIES FOR)
REMOVING BONE MATERIAL)
AND METHOD FOR MAKING)
SAME)
Patricia Oakes, Secretary to Edward G. Greive**SUBMISSION OF AFFIDAVIT AFTER APPEAL UNDER 37 CFR 41.33**

COMMISSIONER FOR PATENTS

Alexandria, VA 22313-1450

Sir:

An affidavit is submitted herewith after a notice of appeal was filed.

Remarks/Arguments begin on page 2 of this paper.

REMARKS

A Notice of Appeal was filed in this case on September 8, 2010. The Appeal Brief has not yet been filed. A Second Declaration of inventor Jean Francois Biegun is submitted herewith. The record includes a First Declaration of Jean Francois Biegun that was filed on March 16, 2009.

Submission of this Declaration is appropriate under 37 CFR 41.33(d)(1), which reads as follows:

An affidavit or other evidence filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) and prior to the date of filing a brief pursuant to § 41.37 may be admitted if the examiner determines that the affidavit or other evidence overcomes all rejections under appeal and that a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented has been made.

The Second Declaration overcomes all rejections under appeal. The Examiner has relied upon the Geisser reference (U.S. Patent No. 5,454,815) for the alleged properties of the device disclosed therein. Inventor Biegun's Second Declaration contradicts the Office's interpretation of Geisser's teachings. Particularly, Mr. Biegun declares "I further hereby declare that prior art his rasp such as described in US 5454815 cannot rasp bone having a Shore D Hardness of 85 or more, and since hip bones have a Shore D hardness comprised between 85 and 95, prior art rasp recited in US 5454815 cannot rasp hip bones." In view of this, the Geisser reference does not disclose features recited by the pending claims, and consequently, the rejections of the claims should be withdrawn.

The Second Declaration is necessary and was not earlier presented for good and sufficient reasons. The Second Declaration is necessary as it overcomes all rejections under appeal. Mr. Biegun made his First Declaration to distinguish the teachings of Geisser. The Office continued to reject the claims, however, and the Examiner remarked about the shortcomings of the First Declaration. The Second Declaration also responds to the Office's interpretation of the Geisser reference, including the interpretation taken in the Final Office Action mailed 06/09/2010.

Accordingly, the Second Declaration should be admitted and the claims should proceed to issue. If any issues remain, a telephone call to the undersigned would be appreciated.

Respectfully submitted,



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